On the whole, then, the recent North Dakota decision seems sound. The result in this instance throws the expense of the experiment on the carrier. But it is not the first time the carrier has been so burdened.[18] And, had the earlier decision declared the rates unconstitutional and the later declared them fair, the principle could have been invoked by the carrier to throw laboratory expenses upon the state.

RECENT CASES

ANIMALS — TRESPASS ON LAND — DAMAGES. — Defendant's sheep trespassed on plaintiff's land and while wrongfully there developed scab, in consequence of which they were detained two and a half months in a barn and meadow on plaintiff's land under the provisions of a statute. Plaintiff's sheep which had been in contact with the trespassing sheep were also detained. There was no evidence that defendant knew the sheep were diseased. *Held*, distinguishing *Cox* v. *Burbidge*, 13 C. B. N. S. 430 and *Cooke* v. *Waring*, 2 H. & C. 232, that plaintiff might recover as damages for the trespass the keep of the sheep, depreciation of plaintiff's sheep, expense of dipping the sheep, and loss of profits. *Theyer* v. *Purnell*, [1918] 2 K. B. 333.

For discussion of this case, see NOTES, page 420.

ASSIGNMENTS — PRIORITIES — TRUSTS — RULE IN *DEARLE* VERSUS *HALL* NOT APPLICABLE IN DETERMINING PRIORITY BETWEEN *CESTUI QUE TRUST* AND SUBSEQUENT ASSIGNEE. — Solicitors executed a declaration of trust in favor of defendant in respect of a mortgage debt secured by a deed upon a reversionary interest in a share of personalty settled by a will. In breach of trust the solicitors purported to assign the same interest to the plaintiff, a *bonâ fide* purchaser. The plaintiff gave notice to the trustees under the will, and, having received possession of the title deeds, claims priority over defendant who had not given notice of his interest. *Held*, that the *cestui que trust* prevails, the rule in *Dearle* v. *Hall* having no application to a beneficiary under a declaration of trust. *Hill* v. *Peters*, [1918] 2 Ch. 273.

In England and in some American jurisdictions the obligee of a legal debt cannot transfer it to a *bonâ fide* purchaser free of latent equities. *Penn* v. *Browne*, Freem. C. 214; *In re European Bank*, L. R. 5 Ch. App. 358; *Bush* v. *Lathrop*, 22 N. Y. 535. *Contra*, *Murray* v. *Lylburn*, 2 Johns. Ch. (N. Y.) 441; *Winter* v. *Montgomery Gas-Light Co.*, 89 Ala. 544, 7 So. 773. By the weight of authority the assignee of an equitable interest likewise takes subject to all equities; and this is held even by courts which reject the rule in regard to legal obligations. *Clouette* v. *Story*, [1911] 1 Ch. 18; *Henry* v. *Black*, 213 Pa. 620, 63 Atl. 250. The principal case presents the question whether the fact that the assignee has given notice to the trustee or obligor, the *cestui que trust* not having done so, gives him priority in spite of the above rule. Where the question is between successive assignees for value in good faith, England and a number of American jurisdictions hold that the first to give notice prevails. *Dearle* v. *Hall*, 3 Russ. Ch. 1; *Jenkinson* v. *N. Y. Finance Co.*, 79 N. J. Eq. 247, 82 Atl. 36. *Contra*, *West Texas Lumber Co.* v. *Green County*, 188 S. W. 283 (Tex. Civ. App.). This rule rests upon the analogy to the duty of a vendee of chattels to take possession in order to make his title indefeasible. See *In re Phillips' Estate*, 205 Pa. 515, 522, 55 Atl. 213, 215. See also 25

tempted to show the rates confiscatory; but on motion this defense was stricken out. The court declined to pass in advance on the main question in the case.

[18] Compare the Adamson Law. Wilson *v.* New, 243 U. S. 332.